

Charges for updates of canned software are fully taxable. See 86 Ill. Adm. Code Section 130.1935. (This is a GIL).

August 4, 2004

Dear Xxxxx:

This letter is in response to your letter dated February 27, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is a global provider of computer software and services. We are writing to request a written determination as to the taxability on our software maintenance agreement renewals.

When a customer purchases our software products (in CD format), we ship them the CD and manuals and invoice them for the products, one year of maintenance and support, and taxes, which are all separately stated on the invoice. The following year, the customer may renew their optional annual maintenance and support plan as the maintenance agreement approaches its expiration date. We invoice upon notification of desire to renew by the customer.

Our maintenance and support agreement includes enhancements, upgrades and improvements to the software, when and if developed, and reasonable efforts to correct errors or deficiencies in the software. Maintenance further includes reasonable technical assistance via the telephone or email. Whenever upgrades become available, we ship CDs or provide via the world wide web to the customers who have active maintenance agreements, free of charge.

We'd appreciate it if you can provide us with a written statement as soon as possible advising on how the sales and use tax applies to our maintenance renewals.

I look forward to your reply.

DEPARTMENT'S RESPONSE:

Generally, sales of "canned" computer software are taxable retail sales in Illinois. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See subsection (c) of 86 Ill. Adm. Code 130.1935. Sales of software are taxable regardless of the means of delivery. For instance, the transfer or sale of canned computer software downloaded electronically would be taxable.

The tax applies to the entire charge made to the customer, including charges for all associated documentation and materials. See 86 Ill. Adm. Code 130.1935(b). Charges for updates of canned software are fully taxable pursuant to 86 Ill. Adm. Code Section 130.1935. If the updates qualify as custom software under subsection (c) of Section 130.1935, they may not be taxable. Maintenance agreements for computer software are generally taxed in the same manner as other maintenance agreements. See 130.1935(b). However, if maintenance agreements provide for updates of canned software, and the charges for those updates are not separately stated and taxed, then the whole agreement would be taxable as sales of canned software.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk